IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5574 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THAKOR JAGDISHBHAI MANGALBHAI AND OTHERS
Versus
GENERAL MANAGER DIST UDYOG KENDRA AND OTHERS

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Appearance :
MR RN SHAH for the Petitioners

Ms Trusha Patel, AGP for the respondents

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 04/12/2006

ORAL JUDGMENT:

By filing this petition the petitioners have prayed that the respondents maybe directed to absorb the petitioners on regular post and

on permanent basis by quashing the termination order passed against the petitioners.

The petitioners herein were appointed on a purely temporary basis in connection with some census work as census of registered small scale industries was required to be done. Appointment order given to the petitioner No.1 is at page 11 of the petition as per which the petitioner was appointed at fixed salary of Rs.1200 per month. He was required to visit small scale industries and to obtain particulars of the same. As per clause 4 of the appointment order the appointment is purely temporary and only till 31.12.1989 and his services were not continued at the end of the said period. All these petitions were appointed on similar terms and conditions. Since the aforesaid project work was over, the petitioners having continued in service, which has resulted into filing of this petition at their instance.

The said petition is resisted on behalf of the Department and affidavit-in-reply has been filed by the General Manager, District Industries Centre, Vadodara. Ms Trusha Patel, learned Assistant Government Pleader pointed out that the petitioners were appointed only for a particular project and since the work was over, no further orders were given to them. Even as per the appointment order it is clear that it is a tenure appointment and petitioners have no right to continue as the post in question has not continued further. It is pointed out that on completion of the stipulated period of work the petitioners were relieved from service. It is further submitted by her that it was not even necessary to give any specific notice before termination as the appointment of the concerned petitioner is contractual one and as per Rule 4 of the Bombay Civil Service Rules, the terms of specific contract enforceable at law necessarily override the provisiosn of other Rules.

Considering the said aspect, no prior notice was required before not continuing the services of the petitioners further. In paragraph 11 of the affidavit it is stated as under:-

> "11. It is submitted that the order dated 30.06.1990 relieving the petitioners is absolutely legal. By no stretch of imagination it could be branded as arbitrary and illegal order. By passing of the said order, no Rule of BCSR or Civil Service Discipline and Appeal Rules are breached, as relieving of the petitioners is not penal in nature. They are relieved because of the fact that they were appointed on ad hoc basis for the census work which was over by 30th June 1990 and there left no work for petitioners. At this stage, the respondent would like to point out that in the letter relieving the petitioners dated 29.06.1990, it is specifically mentioned that the petitioners were appointed as enumerators for the small-scale industry census work and as it was over by 29.06.1990 they were relieved from the service. At this stage the respondent would like to point out that at the time of appointment of the petitioners they were specifically informed that they are not entitled to any benefits given to the Government servant. The said fact is evident on perusal of condition No.6 of the appointment letters at Annexure-A. What is stated in paragraph 1 is not true and correct and therefore not admitted by the respondent. The fact that the petitioner was called for the interview through employment exchange has no relevance whatsoever. The petitioners cannot claim any right to continue merely because they were appointed through employment exchange as their appointment were purely on ad-hoc basis. ..."

Ms Patel has relied upon decision of this Court in case of Jashwantkumar J Desai v. Sabarkantha District Panchayat & Ors., 2001 (2) GLH 162 wherein in paragraph 6.2 the Court has held as under:-

> "6.2 Therefore, on the authority of the decision of the Supreme court in State of Gujarat v/s P.J.Kampavat [supra], no prior notice was required to be given under Rule 33 [1] [b] of the said Rules to any of these two petitioners since their appointments were purely contractual appointments with a specific stipulation that their services were liable to be terminated without notice. Thus, since the applicability of Rule 33[1][b] of the said Rules was so expressly excluded, the

> petitioners having accepted their appointments on the basis of such conditions, cannot claim any right on the ground that the provisions of Rule 33[1][b] of the said Rules were violated. It will be seen from the provisions of Rule 4 of the said Rules that the terms of specific contract enforceable at law, necessarily override the provisions of these Rules. Therefore, the term which was incorporated namely, that the services of these petitioners were liable to be terminated without notice, being a term enforceable at law had the effect of overriding the specific provision of Rule 33[1][b] by virtue of Rule 4 of the said Rules. Moreover, as pointed out by the Supreme court in P.J.Kampavat [supra], even Rule 2 of the said Rules provides that the Rules apply except where it is otherwise expressed or implied, and therefore, the condition that the services could be terminated without notice obviously prevailed over any rule to the contrary, including Rule 33[1][b] of the said Rules."

I have heard both the learned counsel for the parties. In my view, the petitioners are not entitled to any relief of reinstatement as in the appointment order itself a clear stipulation is made that the services of the petitioners are purely temporary and subject to completion of the project work and therefore upon completion of the project work their services were not continued. Considering the aforesaid aspect of the matter, it cannot be said that the action of the respondent is arbitrary or illegal. In that view of the matter, no illegality has been committed. However, in case any work is available and if any representation is made, it is for the authorities to consider the same in accordance with law. Subject to what is stated above, the petition is rejected. Rule is discharged.

(P.B.MAJMUDAR, J.)

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